

How to Protect Your Assets Without Having a Corporation in Costa Rica

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It has been a common practice for expatriates to buy real estate property and vehicles in Costa Rica and proceed by placing the title on a corporation created with the sole purpose of protecting said assets from possible liabilities, liens by creditors and other contingencies. Then these corporations do not generate any type of income and therefore maintain the status of inactive for tax purposes. At some point it was also a tool to avoid paying transfer taxes when selling a property, because instead of transferring the title, the shares were transferred.

Notwithstanding the foregoing, in recent times new regulations and obligations have been approved, causing owning an inactive corporation to be more expensive. Now it is necessary to pay an annual tax in the month of January, perform a stockholders report to the Central Bank during the month of April, and soon it will also be necessary to report on the amount of capital stock and the value of assets, as well as presenting annual tax returns, even when no tax is due. In addition, for about 7 years it has been mandatory to pay transfer tax when transferring more than 50% of the capital stock.

For all the above, some have decided to put the title of their property in their name instead of creating a corporation. Even so, the concern remains that the property may be prosecuted or encumbered by third parties when any type of personal liability arises. Something additional requiring being taken into account is what happens in the event of death, because it is very important to take precautions in order not to leave those loved ones with legal entanglements. In this article we mention a couple of little-known tools that may be helpful if certain conditions are met.

The first tool is called **Patrimonio Familiar**. Its main benefit is that real estate property with this type of lien cannot be pursued by creditors of any kind. For a property to have this benefit, it must meet the following requirements: 1. It must be a property used as a home for the owner and its family group. 2. The maximum size of the property is 1,000 square meters in urban areas, or 10,000 square meters in rural areas. 3. The affectation must be made by the owner in favor of the spouse, children or adults who have a disability or are over 65 years of age who are financially dependent on the owner.

To create the figure of Family Patrimony, it is necessary to appear in front of a Notary Public to request the preparation and subsequent registration of the document. Once registered, it will appear as a lien on the property title. The following should be noted: 1. The benefit does not apply to debts existing before the lien registration. 2. The benefit does not apply to the collection of debts with the local municipality for property taxes. 3. This type of lien does not replace a will or avoid having to initiate the Probate process in the event of the owner's death.

The second tool is called **Derecho de Usufructo** or Usufruct Right. It can be used as rights of survivorship to guarantee succession of property to a loved one. To avoid probate some people just decide to transfer the property title to the chosen heirs while they are still alive. But that involves the risk that the beneficiaries will throw them out right away to use or sell the asset. But keeping the Usufruct Right, grants the right to live and enjoy the property for life, even though the title belongs to a different person. Basically, a donation of the property is made, but the right of usufruct for life is reserved.

Keeping the Usufruct Right grants that you will never be tossed out, not even in a tax foreclosure or any other type of legal action. The Tenancy Act even establishes that the Usufruct Right holder is the one legally authorized to even rent the property to a third party and receive the rent price over the title holder. When the usufruct right holder dies, the

property title owner can request that the lien gets cancelled, being able to dispose of the property on any way, saving thousands of dollars on expenses and taxes for not having to go thru probate.

There are different ways to protect yourself and your assets in Costa Rica. Here you can see two that are rarely used but can be very effective and save headaches. In any case, when holding property in your name it might be a good idea to have some civil responsibility insurance policy and also a good insurance policy for your vehicle. Having a traffic accident can generate personal liability that can affect your other assets registered in your name

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate, and Real Estate Law. He has also acted as an external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [(#)]